IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1969

NUMBER 875

JOHNNY B. DAPPER

vs.

CALIFORNIA

PETITION FOR A REHEARING OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Johnny B. Dapper
In propria persona
335 N 34 Street
San Diego, California
Zip Code 92102

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Johnny B. Dapper, in propria persona, the petitioner herein prays for this Court to set aside the action of February 24, 1970 denying the Writ of Certiorari, and to now issue the Writ.

On May 28, 1969 the California Supreme Court granted petitioner a Writ of Habeas Corpus after declaring invalid three counts of a five count complaint, and allowing the two remaining counts to stand. (71 A. C. 197)

The two counts allowed to stand had previously been dismissed by the San Diego City Attorney prior to trial. Which trial was subsequently set aside. The dismissed counts were stipulated back into the complaint for the second trial by the City attorney and Court appointed counsel over the strong objection of petitioner. (California Penal Code Section 1387 bars this action in misdemeanors)

Petitioner believes that the California Supreme Court wished to grant him Habeas Corpus and also allow the City Attorney to have credit for a conviction for the record. As please note Court's Opinion; "case remanded to enter judgment", not to pronounce sentence. As the Court knew, Penal Code sections 363 and 1496 prohibits recommitting or restraining of his liberty, one discharged upon the Writ of Habeas Corpus. However the matter did not work out that way.

As petitioner has pointed out in his petition for a Writ of Certiorari: The California Supreme Court's Opinion was reached without benefit of the lower trial court record. (please see"Certificate" of the Clerk of California Supreme Court) Had that record been before the Court, petitioner would be completely vindicated. And that is the reason he sought relief from the United States Supreme Court believing as he has heard many times during his fifty nine years in this Country, that the individual's rights are supreme, and that this Court will protect them, and prevent their abridgment.

INTERVENING CIRCUMSTANCES

On July 2, 1969 the California Supreme Court sent down it's Remittitur in this case. July 7,1969 at 8:30 A.M. petitioner entered office of Municipal Court, San Diego. To procure photo copies of docket sheets of case M 43578. (this case) Was told record was sent to Setting and Motion Department and that copies could be obtained there. Petitioner went to said Department, they could not make copies before Friday the 11 of July. So he went back to the main office, was discussing making of copies with Clerk when his phone rang, the message, he said was that the Judge wanted to see petitioner at 1:30 P.M. the same day.

Petitioner assumed the Judge was curious about what copies he wanted from the record. Petitioner responded to the Judge's request, not expecting any tricks or deceit from him.

Petitioner arrived at Judge's Courtroom at 1:37 P.M. four people were there two had matters for the Judge. At 1:43 the Judge came in and commenced the matter concerning the people waiting. Two minutes later two Firemen entered, and two deputy attorneys At this moment petitioner suspected he had been deceived and entraped. Judge completed matter of four people. He then picked up the folder, and said now the matter of People vs. Dapper, and asked,where is your attorney. Petitioner replied; he did not have an attorney and requested that one be appointed, he then objected to the very irregular proceeding. No written notice sent at least ten days prior to proceeding as required by Municipal Court Rule. Judge said he must sentence to-day (July 7,1969)fifth day after receiving remittitur, unless petitioner would waive time. Either way a violation of petitioner's Constitutional right to counsel, at every stage of proceeding. He believes it quite a bit prejudice if

not a little sadistic for a Judge to entice him into his Courtroom so he could sentence that day.

No section of the Penal Code or the Code of Civil Procedure of California, or the Rules of Court authorizes the use of the Telephone to summon one to trial, hearing, judgment, or any proceeding. (Please see Petition for Writ of Mandate 312858)

Petitioner filed the above mentioned Petition in Superior Court July 18,1969. However deputy City attorney by some device, had petition for Mandate denied ex parte, July 28,1969. Petitioner finds no precedent for this action. Code of Civil Procedure provides for petitioner to obtain the Writ ex parte but no provision is made for respondent to have petition denied ex parte. Deputy City attorney went to Municipal Court next day, without notice to petitioner, had Judge pronounce sentence (not "enter judgment") 180 days one day suspended, and bench warrant issued. In the afternoon of same day petitioner received notice denying Writ of Mandate. And immediately prepared and filed notice of appeal and had stay order 312858 granted by Superior Court Judge. However marshals came to his home, failing to honor stay order, in attempt to serve warrant,until Judge was contacted and he ordered warrant recalled.

August 5,1969 deputy City attorney put motion to dismiss petitioner's appeal from denial of Writ of Mandate, before the Court of Appeal.Motion granted September 16,1969. Then on or about September 25 1969 City attorney caused Municipal Court Judge to issue another bench warrant. Although stay order not vacated, and Court of Appeal remittitur not sentuntil November 17,1969. Petitioner was seized by complete suprise as he was leaving Superior Court September 25,1969, he was there to argue for a Writ of Prohibition against another complaint, M 76791 the third concerning same facts as in this instant case

Petitioner was not permitted to read nor was he served a copy of the warrant, he showed order staying execution of any sentence, S.C.312858 to the marshals, but was taken immediately to jail.He then showed stay order to Sheriff's personel, he phoned Sheriff's office and also talked to the under Sheriff's office personel, who sent jail Commander down to see him. Commander also refused to honor stay.

Petitioner made application from the county jail on October 6,1969 to a Justice of the Court of Appeal, but unknown to him this Justice had left the Court. The Presiding Justice took jurisdiction, and summarily denied application for Habeas Corpus Writ

Petitioner then made application to the California Supreme Court on October 27,1969 for a Hearing on petition for Writ of Habeas Corpus. Which also was denied November 5, 1969.

After having been denied by the State Courts petitioner, on December 10,1969 made application to the United States District Court,Southern District of California, for a Writ of Habeas Corpus,which is now pending. Awaiting appointment of another Judge The former Judge Frederick Kunzel passed away Nov-19, 1969, unknown to petitioner.

Petitioner failed to put this item proper order. On August 4,1969 he filed Notice of Appeal from the illegal sentence pronounced against him on July 29,1969 in Municipal Court, San Diego. And on August 13,1969 he filed Designation of the Record On Appeal. No action was taken by the Municipal Court in this matter, nor was petitioner admitted to bail on appeal. Which is a right Penal Code 1272

Petitioner has now served the full sentence less forty days good time. Having been denied bail and denied an Appeal, by Municipal Court, San Diego

Petitioner has shown many violations of his Constitutional rights, basically, due process, XIV Amendment, by the California Courts. In the intervening since the Opinion or the California Supreme Court was entered May 28, 1969.

Surely this Court does not sanction this abuse of Judical power, the direct result of Opinion by California Supreme Court, given without benefit of the record of the trial Court being at hand.

This Court cannot give petitioner back his time lost while deprived of his liberty. But this Court does have the power to exonerate him.

As some great Patriot of our Country once said "No man's liberty is safe if one man's liberty is violated "

Respectfully Submitted

I Johnny B.Dapper the petitioner have made and read this petition. The foregoing is true of my own knowledge except as to those matters stated herein on my information and belief,and as to those matters I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct.

April 23, 1970
San Diego, California

Johnny B. Dapper